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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EDWIN VERAS,	:
	:
Plaintiff,	:
	:
-against-	:
	:
CITY OF NEW ROCHELLE, ARAZ ALALI, JOHN	:
and JANE DOES 1 through 10,	:
	:
Defendants.	:
-----	X

Case No. 07-CV-11172 (CLB)

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION PURSUANT TO LOCAL RULE 1.4  
TO BE RELIEVED AS COUNSEL**

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### **Introduction**

It is fundamental that there cannot be effective representation without an open line of communication between the attorney and client. Despite repeated requests in writing and otherwise, Police Officer Alali has made no effort to contact the attorneys at Silverberg Zalantis LLP and thus far, has not been engaged in any aspect of his defense in this action. Thus, it is respectfully requested that this Court grant the application of Silverberg Zalantis LLP to be relieved of counsel.

### **Point I**

### **THIS COURT SHOULD GRANT THE REQUESTED APPLICATION**

Rule 1.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York provides that:

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.<sup>1</sup>

The Second Circuit has ruled that “[d]istrict courts are due considerable deference in decisions not to grant a motion for any attorney’s withdrawal.”<sup>2</sup> Nonetheless, the Second Circuit has recognized that “[i]n addressing motions to withdraw as counsel, district courts have typically considered whether ‘the prosecution of suit is [likely to be]

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<sup>1</sup> Rule 1.4 of Local Rules of the SDNY and EDNY.

<sup>2</sup> *Whiting v. Lacara*, 187 F.3d 317, 320 (2d Cir. 1999).

disrupted by the withdrawal of counsel.”<sup>3</sup> As noted by the Second Circuit, while district courts have denied motions to be relieved when the case is “on the verge of trial readiness,”<sup>4</sup> district courts have granted such motions in other situations where the case was at its beginning stages “finding that because ‘discovery is not complete and the case is not presently scheduled for trial . . . granting the instant motion will not likely cause undue delay.’”<sup>5</sup>

Here, as this litigation is only at its beginning stages as a discovery schedule has not even been established, there will be relatively little disruption by the withdrawal of Silverberg Zalantis LLP as counsel for Police Officer Alali. Silverberg Zalantis LLP cannot continue to provide effective representation to Police Officer Alali without an open line of communication between the attorney and client. Further, once this Court issues a scheduling order as anticipated on April 28, 2008, Police Officer Alali’s counsel will be faced with a relatively tight deadline to depose Plaintiff and then make the appropriate motion on the issue of the qualified immunity defense. Without Police Officer Alali’s cooperation, Silverberg Zalantis LLP cannot effectively defend his interests during this next stage of the litigation.

Again, while Silverberg Zalantis LLP feels strongly about the likelihood of success of Police Officer Alali’s qualified immunity defense and other defenses raised, Silverberg Zalantis LLP cannot continue to represent Police Officer Alali’s interests without any input, guidance or cooperation from Police Officer Alali.

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<sup>3</sup> *Id.*, citing, *Brown v. National Survival Games, Inc.*, No. 91-CV-221, 1994 WL 660533, at \*3 (N.D.N.Y. 1994).

<sup>4</sup> *Id.* at 321, citing, *Malarkey v. Texaco*, 81 Civ. 5224, 1989 WL 88709, at \*2 (S.D.N.Y. 1989).

<sup>5</sup> *Id.*, citing, *Brown* at \*3.

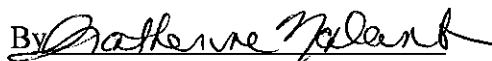
**Conclusion**

For the reasons stated herein, this Court should grant Silverberg Zalantis LLP's application in its entirety.

Dated: White Plains, New York  
April 4, 2008

Respectfully submitted,

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